

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

RED BARN MOTORS, INC.,)	
PLATINUM MOTORS, INC.,)	
MATTINGLY AUTO SALES, INC., and)	
YOUNG EXECUTIVE MANAGEMENT &)	
CONSULTING SERVICES, INC.,)	No. 1:14-cv-01589-TWP-DKL
individually and on behalf of other members of)	
the general public similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
NEXTGEAR CAPITAL, INC. f/k/a DEALER)	
SERVICES CORPORATION,)	
COX ENTERPRISES, INC.,)	
COX AUTOMOTIVE, INC., and)	
JOHN WICK,)	
)	
Defendants.)	

ORDER ON DEFENDANTS’ MOTION TO STRIKE JURY DEMAND

This matter is before the Court on a Motion to Strike Jury Demand filed pursuant to Federal Rule of Civil Procedure 12(f) by Defendants NextGear Capital, Inc., Cox Enterprises, Inc., Cox Automotive, Inc., and John Wick (collectively “Defendants”) ([Filing No. 128](#)). Defendant NextGear Capital entered into agreements with Plaintiffs Red Barn Motors, Inc., Platinum Motors, Inc., Mattingly Auto Sales, Inc., and Young Executive Management & Consulting Services, Inc. (collectively “Plaintiffs”) in 2009 and 2011 to provide lines of credit for financing the Plaintiffs’ used car dealership operations. One of the provisions in the parties’ contracts is a waiver of any right to a jury trial by the Plaintiffs ([Filing No. 117-1 at 8–9](#)).

Based upon this contractual waiver of a right to a jury trial, the Defendants move to strike the jury demand that is included in the Plaintiffs’ Amended Complaint. The Defendants point to

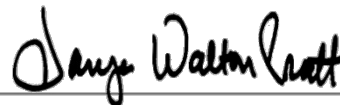
Indiana case law that establishes a strong presumption of the enforceability of contracts according to the contract's unambiguous terms, including provisions waiving a jury trial. *See, e.g., Tender Loving Care Mgmt., Inc. v. Sherls*, 14 N.E.3d 67, 74 (Ind. Ct. App. 2014); *Sanford v. Castleton Health Care Ctr., LLC*, 813 N.E.2d 411, 420 (Ind. Ct. App. 2004). The Defendants argue that, because the parties' contracts form the basis of this litigation, the jury trial waiver in the contracts must be enforced according to its plain terms, and the Plaintiffs' request for a jury trial should be stricken.

The Plaintiffs did not respond to the Defendants' Motion to Strike Jury Demand. Their failure to respond to the argument of a contractual waiver of jury trial constitutes an admission of the facts supporting the Defendants' waiver argument. *See Smith v. Lamz*, 321 F.3d 680, 683 (7th Cir. 2003); *Marshall v. Wellcraft Marine, Inc.*, 103 F. Supp. 2d 1099, 1113–14 (S.D. Ind. 1999).

Because the Plaintiffs contractually waived their right to a jury trial on any claims arising from their contracts with the Defendants, and those contracts are the basis of this litigation, the Court **GRANTS** the Defendants' Motion to Strike Jury Demand from the Plaintiffs' Amended Complaint ([Filing No. 128](#)). All claims in this litigation will be tried by the Court.

SO ORDERED.

Date: 3/27/2017



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

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